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House Bill _____
By _____

Senate Bill No.SB0269
By Womack

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 31 and Title 56, Chapter 12, to enact the "Tennessee Insurance Guaranty Association Bond Act of 1995".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 31, is amended by adding the following new part:

4-31-801 This chapter shall be known and cited as the "Tennessee Insurance Guaranty Association Bond Act of 1995."

4-31-802 The general assembly finds and declares that if a disaster causes an insolvency resulting in covered claims in excess of its capacity to pay from assessments under § 56-12-107(a)(3), it is proper to authorize the authority to issue bonds to expedite the handling and payment of covered claims against insolvent insurers operating in this state. It is determined to be in the best interest of, and necessary for the protection of public health, safety, and general welfare of the residents of this state, and is hereby declared to be an essential public purpose to permit such actions as will provide relief to

claimants and policyholders having covered claims against insolvent insurers operating in this state, by expediting the handling and payment of covered claims.

4-31-803 As used in this part, unless the context otherwise requires:

(1) "Association" means the Tennessee Insurance Guaranty Association.

(2) "Claim" or "claims" means a covered claim as defined in § 56-12-104(4)(A), to be paid from the issuance of bonds under this part in the event of insolvencies as described in § 56-12-107(b)(3).

4-31-804 The authority may issue bonds in an amount not to exceed the amount approved under § 4-31-805 with the proceeds thereof to be used in accordance with the provisions of the bond documents under which the bonds are issued for the purpose of paying to claimants or policyholders covered claims, as such term is deemed herein as arising through an insolvency. Any bonds issued by the authority under this subsection may all be payable from and secured by moneys received by or on behalf of the authority from assessments levied under § 56-12-107(b)(3), and assigned and pledged under § 56-12-107(b)(3), to or on behalf of the authority for the benefit of the holders of such bonds in connection with such assistance program. The funds, credit, property, and taxing power of the State of Tennessee shall not be pledged for the payment of such bonds.

4-31-805 Prior to an exercise of powers conferred by § 4-31-804, the commissioner of commerce and insurance of the state of Tennessee shall approve the size of the bond issuance to cover claims in the event of an insolvency.

4-31-806 For the purpose of providing moneys to fund loans authorized by this part, the authority, in addition to the powers otherwise created by law, has the power and is hereby authorized to issue from time to time negotiable bonds and notes of the authority in accordance with the following terms:

(1) The authority shall establish a repayment schedule to be made under a loan agreement. The repayments shall be in such amounts as will be at least sufficient, together with other funds available therefor, to pay the principal of, and interest on, bonds and notes issued by the authority for the purpose of providing loans to the association for the payment of covered claims as defined herein in the event of an insolvency, and as may be necessary for the authority to maintain a reserve for debt service. The authority may collect a reasonable administrative fee in addition to such repayment schedule in an amount as may be set forth in the loan agreement.

(2) The annual repayment schedule for each loan shall be, in cases prior to the funding of such loans or where such loans have been financed on an interim basis other than by bonds, an estimated annual repayment schedule showing debt service requirements under the loan agreement as if the bonds to be issued to fund such loans will bear interest at a rate per annum and mature in such manner as the authority shall establish at the time of the approval of each such loan and, in cases where bonds have been issued to fund such loan, the actual debt service requirements on such bonds.

4-31-807 Administration of Loans.

(a) The authority shall administer loans made under the provisions of this part.

(b) In so doing, the authority may adopt rules and regulations necessary for the effective administration of this part, including the promulgation of prerequisites which must be fulfilled by the association in order to be eligible for a loan, procedures to be followed in making loan applications to the authority, procedures to be followed in the disbursement of loan funds, and procedures for enforcing loan agreements entered into by the association with the authority.

4-31-808 Loan Agreements.

(a) Any loan agreement may include such provisions as may be agreed upon by the authority and the association and shall include, in substance, the following:

(1) The amount of the loan, not to exceed the estimated reasonable cost of the claims to be financed, as determined by the authority; and

(2) An agreement by the association to:

(A) Proceed expeditiously with, and complete payment of the claims in accordance with the loan agreement approved pursuant to this part;

(B) Pledge any assessments and make payments according to the repayment schedule established by the authority; and

(C) Establish and maintain adequate financial records for the payment of claims, cause to be made an annual audit of the financial records and transactions covering each fiscal year in accordance with generally accepted accounting principles, and furnish a copy of such audits to the comptroller of the treasury.

(b) Failure of the association to file the audit report required by subdivision (a)(2)(C) with the comptroller of the treasury each year, until the loan, along with interest, is totally repaid, is a Class C misdemeanor. Each day of continued violation is a separate offense.

4-31-809 Approval of Agreements - Audits. All loan agreements entered into pursuant to this part shall be subject to approval by the attorney general and reporter as to the form and by the commissioner of finance and administration, and all payments

made pursuant to such loan agreement shall be as to funding approved by the authority, and such payments shall be subject to audit at any time.

4-31-810

(a)

(1) The bonds and notes for claims payment shall be authorized by resolution of the authority, may be in one (1) or more series, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof, not exceeding eight (8) years from the date of issue of such original note, and in the case of any such bond not exceeding thirty (30) years from the date of issue, as such resolution or resolutions may provide.

(2) The bonds and notes shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide.

(3) The bonds and notes may be sold at public or private sale, at such price or prices as the authority may provide.

(b) Any resolution or resolutions authorizing any bonds or notes, or any series thereof, may contain the following provisions, which shall be a part of the contract with the holders thereof:

(1) Pledging all or any part of the moneys which the authority is permitted by law to pledge, and securing the payment of the bonds or notes or of any series thereof, subject to such agreements with bondholders or noteholders as may then exist;

(2) Creating and establishing such funds and accounts as may be deemed necessary or advisable and setting aside reserves or sinking funds and agreeing as to the maintenance, regulation and disposition thereof;

(3) Limiting the issuance of additional bonds or notes, the terms upon which additional bonds or notes may be issued and secured, and the refunding of outstanding or other bonds or notes;

(4) Prescribing the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto, and the manner in which such consent may be given;

(5) Investing in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 4-31-106 and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, powers and duties of such trustee; and

(6) Setting forth any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

(c)

(1) The authority, subject to such agreements with bondholders or noteholders as may then exist, shall have power to purchase notes or bonds out of any moneys available therefor at a price not exceeding:

(A) The redemption price then applicable, plus accrued interest to the next interest payment date thereon, if the notes or bonds are then redeemable; or

(B) The redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemption, plus accrued interest to such date if the notes or bonds are not then redeemable.

(2) All bonds and notes so purchased shall be canceled.

(d) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(e) If any member of the authority whose signature or facsimile signature thereof shall appear on any bonds or coupons ceases to be a member of the authority before the delivery thereof, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes the same as if such member had remained a member of the authority until after such delivery.

(f)

(1) Any pledge made by the authority pursuant to this chapter shall be valid and binding from the time when the pledge is made, the moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof.

(2) Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(g)

(1) The bonds and notes shall not be invalid for any irregularity or defect in the proceedings for the issuance or sale thereof.

(2) Such bonds and notes shall contain a recital that they have been authorized and issued pursuant to the laws of the state, including particularly this chapter, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(3) Bonds and notes of the authority shall not constitute a debt or a pledge of the faith and credit of the state or a local governmental unit, and the holders or owners of such bonds and notes shall have no right to have taxes levied by the general assembly or any local governmental unit or any other taxing authority within the state for the payment of the principal of, premium, if any, and interest on, such bonds and notes, but such bonds and notes shall be payable solely from the assessments pledged for their payment.

(4) All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as the case may be, are not a debt of the state, any local governmental unit, creating or participating municipality, any other taxing authority, or any airport authority or municipal airport within the state, but are payable solely from revenues and moneys pledged to the payment thereof.

(h)

(1) The authority has the power, and is hereby authorized, to issue from time to time renewal notes, and bonds to pay notes issued in anticipation of such bonds, and, whenever it deems refunding expedient, to refund any bonds by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured, and to issue bonds

partly to refund bonds then outstanding and partly for any other authorized purpose.

(2) Such refunding bonds and renewal notes may be issued without further authorization, such issuance being deemed authorized by the law authorizing the bonds and notes to be renewed, paid or refunded.

(3) The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

(i) Except as may otherwise be expressly provided by the authority, each issue of its notes or bonds issued pursuant to the provisions of this section shall be limited special obligations of the authority, payable solely from and secured solely by moneys derived by the authority from all or a portion of payments made pursuant to the loan agreement with the association as provided in the resolution authorizing such bonds and notes.

(j) If the authority defaults in the payment of principal of or interest and premium, if any, on the bonds or notes, the determination of such default and the remedies therefor shall be governed by § 4-31-106.

4-31-811

(a) The authority is hereby authorized to establish in the state treasury a separate special trust fund of the authority for each separate issue of bonds or notes which is similarly secured to be known as the "Tennessee Insurance Guaranty Association Fund" and to bear such additional designation as the authority deems appropriate to properly identify each fund.

(b)

(1) The state hereby covenants and agrees that from and after the issuance of any bonds or notes under and pursuant to this part, moneys derived by the state from payments made pursuant to loan agreements with the association as permitted under the terms of the loan agreements which are pledged to the payment of such bonds or notes shall be paid into the particular fund established for the issuance of bonds or notes to which such moneys are pledged.

(2) Such moneys shall be accounted for separately from all other moneys in the treasury and shall be applied by the authority solely for the purpose of paying principal of and interest and premium, if any, on such issue of bonds and notes issued pursuant to this section, refunding moneys due to the association where appropriate, and paying all other costs incidental to the administration of the authority in connection with the loan agreements and the issuance of such issue of bonds and notes.

4-31-812 The authority has the right, in addition to all other rights, by mandamus or other suit, action or proceeding in any court of competent jurisdiction, to require the association and the board of directors and any proper officer, agent or employee of the association to carry out any agreements and to perform its and their duties under this part or any rule or regulation of the authority adopted pursuant thereto.

4-31-813 All actions required or authorized to be taken under this part by the board of directors of the association may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced and shall take effect immediately upon its adoption.

4-31-814

(a) This part shall be in addition and supplemental to any other law providing for financing by the association and shall not be deemed to amend or repeal any other law.

(b) No proceedings by the association shall be required for loan agreements hereunder, except as provided by this part, any provisions of law to the contrary notwithstanding.

(c) Any requirements or restrictions applicable to borrowing by the association contained in any other law shall not be applicable to loans under this part.

SECTION 2. Tennessee Code Annotated, Section 56-12-107(7)(b)(3), is amended by adding the following language at the end of the subdivision:

In the event of an insolvency resulting in covered claims payable by the association in excess of its capacity to pay from assessments under § 56-12-107(a)(3), the association, in its sole discretion, may by resolution request the Local Development Authority to issue bonds pursuant to Title 4, Chapter 31, Part 8, in such amounts as the association may determine necessary to provide funds for the payment of covered claims and expenses related thereto. If such bonds are issued, the association shall have the authority to annually assess member insurers for amounts necessary to secure the bonds and provide repayment of the bond indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of such bonds. Necessary assessments collected pursuant to this authority shall be collected under the same procedures provided in § 56-12-107(a)(3). Assessments collected under this section may be assigned and pledged to or on behalf of the Local Development Authority for the benefit of the holder of such bonds, in order to enable the Local Development Authority to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the

funding of any reserves and any other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued. In addition to the assessments provided for in this section, the association in its sole discretion may utilize assessments made under § 56-12-107(a)(3), to service such bond indebtedness if necessary. The foregoing notwithstanding, the association shall have no obligation to pay covered claims from the proceeds of bonds issued under § 4-31-804. Provided, however, if the association may cause assessments to be made hereunder for such covered claims, and assigns and pledges such assessments to or on behalf of the Local Development Authority as issuer of such bonds for the benefit of holders of such bonds, the association may administer such covered claims and present valid covered claims for payment in accordance with the provisions of the bond documents under which such bonds have been issued.

SECTION 3. Tennessee Code Annotated, Title 56, Chapter 12, Part 1, is amended by adding the following new section:

In no case shall a covered claim include any claim filed with the association, domiciliary or ancillary receiver after the final date set by a court for the filing of claims against the domiciliary or ancillary receiver of an insolvent insurer.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.